

JUDGMENT

Of the Voivodeship Administrative Court in Warsaw

Of 23 March 2007

Case file No. VII SA/Wa 185/07

CONCLUDING PART OF THE JUDGMENT:

The Voivodeship Administrative Court in Warsaw sitting in the panel:

Elżbieta Zielińska-Śpiewak - Presiding Judge, Judge of the Voivodeship Administrative Court,
Judge Rapporteur,

Bogusław Cieśla - Judge of the Voivodeship Administrative Court,

Paweł Groński – Assistant Judge of the Voivodeship Administrative Court,

Ewa Sawicka – Reporting Clerk

Upon hearing on 23 March 2007 of the complaint brought to court by M.S.-U. and R.U. against the decision of the President of the National Health Fund of (...) November 2006, No. (...) to refuse the reimbursement of costs of medical treatment, dismisses the complaint.

STATEMENT OF REASONS

By a decision of (...) August 2006, Director of the (...) Voivodeship Branch of the National Health Fund, upon consideration of the application of M.S.-U. and R.U. for the reimbursement of costs of medical treatment, pursuant to Art. 107 (5) point 16 and Art. 109 of the Act of 27 August 2004 on Publicly Funded Healthcare Benefits (*Dziennik Ustaw* [Journal of Laws] No. 210, item 2135 as amended) and § 7(2) of the National Health Fund Statute (*Dziennik Ustaw* No. 231, item.2161 as amended), refused them the right to healthcare benefits, i.e. did not reimburse the costs of treatment by the method of extracorporeal fertilization amounting to PLN 6,514.00. In its statement of reasons, the authority explained that the National Health Fund had commenced works on the schedule of activities connected with the commencement of contracting the in vitro procedure within a public healthcare program. Until the healthcare program is implemented, there is no legal basis for the Fund to cover the costs of treatment employing this method. M.S.-U. and R.U. filed an appeal against the decision. Upon its consideration, the President of the National Health Fund upheld the challenged decision by another decision of (...) November 2006. In its statement of reasons, the authority stated that in a letter to the Director of the (...) Voivodeship Branch of the National Health Fund dated (...) August 2006, the complainants requested the reimbursement of the costs incurred by them for the treatment of infertility and for the procedure of extracorporeal fertilization for the amount of PLN 6,514.00, for which the appropriate invoices were attached. The authority of the 1st instance, refusing the reimbursement of the costs incurred correctly indicated that the Act of 27 August 2004 on Publicly Funded Healthcare Benefits (*Dziennik Ustaw* No. 210, item 2135 as amended, the Act) does not provide for the financing of the procedure of extracorporeal fertilization known as "in vitro".

Pursuant to Art. 15 (1) of the Act, recipients of medical benefits, under the conditions specified by the Act, are entitled to healthcare benefits whose purpose is maintenance of health, prevention of diseases and injuries, early detection of diseases, treatment, care and prevention and limitation of disabilities. At the same time, pursuant to the definition of healthcare benefits specified in Art. 5 point 40 of the quoted Act, a healthcare benefit is an action connected with preventive treatment, maintaining, saving, restoring or improving health as well as other medical actions resulting from the process of treatment or from separate provisions regulating how they are to be provided. Therefore, the procedure of "in vitro" extracorporeal fertilization is not entailed in this definition. It is a method aiding procreation, which does not treat infertility, but rather allows for the naturally disrupted mechanisms to be set aside in order to result in fertilization.

The President of the National Health Fund, in his further elaborations, also explained that the Non-public Healthcare Unit (...) Women's Clinic, Prevention Centre and Medical Laboratories

with its seat in (...) entered into a contract with the National Health Fund for the provision of healthcare benefits. Under the said contract, the National Health Fund finances such healthcare benefits connected with treating infertility as:

- 1) procedure 5.06.00.0000890 – primary and secondary infertility, diagnostics and treatment;
- 2) procedure 5.06.00.0000740 – female infertility, diagnostics with biochemical examinations, including hormonal examinations, imaging examinations (HSG, ultrasonography, NMR-CT), conservative therapy;
- 3) procedure 5.06.00.0000719 – female infertility – monitoring and modification of treatment (biochemical examinations, ultrasonography).

Records of the case show that the complainants have not filed an application with the Director of the Voivodeship Branch of the National Health Fund requesting a confirmation of their right to healthcare benefits, i.e. the right to the procedure of "in vitro" extracorporeal fertilization. They instead chose to undergo the procedure without filing the application. M.S.-U. and R.U. went through the procedure in question on commercial rules and subsequently filed an application with the National Health Fund for the reimbursement of the costs of the procedures provided on commercial rules to insured persons. The fact that the insured persons were provided with commercial healthcare benefits, which are outside of the national healthcare system, excludes the possibility of subsequent reimbursement of the costs of these benefits by a public payer such as the National Health Fund.

M.S.-U. and R.U. filed a complaint against the decision of the President of the National Health Fund with the Voivodeship Administrative Court, charging that it violates:

- Art. 107 of the Code of Administrative Proceedings,
- Rights resulting from the Convention for the Protection of Human Rights and Fundamental Freedoms,
- Art. 68 § 2 of the Constitution of the Republic of Poland,
- Art. 6 point 4, Art. 15 (2) point 1 and point 5, Art. 17 of the Act of 27 August 2004 on Publicly Funded Healthcare Benefits,
- Art. 3 of the Healthcare Institutions Act of 30 August 1991.

The complainants claimed that Art. 68 § 2 of the Constitution of the Republic of Poland guarantees to all citizens equal access to publicly funded healthcare benefits on the conditions and to the extent specified in a statute. This statute is the Act on Publicly Funded Healthcare Benefits Art. 15 (2), points 1 and 5 of which stipulate public funding for, among others, diagnostic examinations, including medical laboratory diagnostics and specialised ambulatory healthcare benefits. This category of examinations includes, among others, procedures marked with codes 5.06.00.0000890 concerning treatment of primary and secondary infertility and 5.06.00.0000740 concerning female infertility.

The complainants emphasize that pursuant to Art. 3 of the Healthcare Institutions Act, the definition of a healthcare benefit entails, among others, medical activities resulting from the course of treatment, particularly connected with medical examinations and consultations, treatment and diagnostic examinations. The complainants also indicated that in the course of treatment, they also received healthcare benefits during one-day hospital admission, specified in Schedule 6 of Regulation No. (...) of the President of the National Health Fund of (...) July 2006. This Regulation was issued so as to provide, among others, hospital healthcare benefits. Chapter 3 § 8 point 2 of the Regulation stipulates that full-day hospital admission entails the provision of planned healthcare benefits including, amongst others, the diagnostic process. Furthermore, their request is supported by the content of the Schedule to Art. 17 of the Act on Publicly Funded Healthcare Benefits, which contains a closed catalogue of healthcare benefits which are not publicly funded. This catalogue neither contains examinations and diagnostics, nor extracorporeal fertilization. In the opinion of the complainants, the decision of the President of the National Health Fund also fails to meet the requirements set forth in Art. 107 § 1 and § 3 of the Code of Administrative Proceedings. The authority neither indicated nor clarified which provisions of law stipulate the prohibition of reimbursement of incurred costs of medical treatment. Having consideration for the charges

hereinabove, M.S.-U. and R.U. requested that the appealed decision be reversed.

In response to the complaint, the authority requested its dismissal and upheld its position presented in the appealed decision.

The Voivodeship Administrative Court considered the following:

The complaint may not be admitted, as the appealed decision is consistent with the law.

Pursuant to the disposition of Art. 1 of the Act of 25 July 2002 on the Administrative Court System (*Dziennik Ustaw* No. 153, item 1269 as amended), administrative courts supervise the activities of public administration only in terms of their conformity with the law. A complaint is admitted only in the event of finding of violations of substantive law or of significant defects in the conducted proceedings. In the case at issue, such defects and violations did not occur.

The conditions for providing publicly funded healthcare benefits and their extent, as well as the rules of financing such benefits and the procedure thereof are specified by Act of 27 August 2004 on Publicly Funded Healthcare Benefits (hereinafter referred to as the Act on Benefits). Pursuant to Art. 15 (1) of the Act, recipients of medical benefits, under the conditions specified by the Act on Benefits, are entitled to healthcare benefits whose purpose is the maintenance of health, prevention of diseases and injuries, early detection of diseases, treatment, care and prevention and limitation of disabilities. Diagnostic examinations, including medical laboratory diagnostics, are among the benefits financed from public funds (Art. 15 (2) point 1). All recipients of healthcare benefits are entitled to healthcare benefits regarding diagnostic examinations qualified as guaranteed benefits on the basis of a referral issued by a health insurance physician (Art. 32 of the Act). Thus, a referral is a necessary condition for the emergence of right of the insured person to the financing of diagnostic examinations from public funds, while the entities bound to finance these and other benefits on the conditions and to the extent specified in the Act are the competent ministers or the Fund (Art. 14 of the Act on Benefits).

In the case at issue, the complainants filed an application with the Director of the (...) Voivodeship Branch of the National Health Fund, requesting the reimbursement of costs incurred in connection with the treatment of infertility and with conducting the procedure of extracorporeal fertilization at the amount of PLN 6,514.00. In the present case, it is an uncontested fact that M.S.-U. and R.U. are covered by health insurance and that the Non-public Healthcare Unit (...) Women's Clinic, Prevention Centre and Medical Laboratories which provided the procedure of "in vitro" fertilization to the complainants, had entered into a contract with the National Health Fund for the provision of healthcare benefits. Records of the case also show that the National Health Fund, under the contract entered into with the Non-Public Healthcare Unit (...), finances healthcare benefits connected with the treatment of infertility, such as:

- 1) procedure 5.06.00.0000890 – primary and secondary infertility, diagnostics and treatment;
- 2) procedure 5.06.00.0000740 – female infertility, diagnostics with biochemical examinations, including hormonal examinations, imaging examinations (HSG, ultrasonography, NMR-CT), conservative therapy;
- 3) procedure 5.06.00.0000719 – female infertility – monitoring and modification of treatment (biochemical examinations, ultrasonography).

At the time of commencement of the diagnostic examinations and of the procedure of extracorporeal fertilization, the complainants did not have a referral from a health insurance physician to conduct examinations qualified as guaranteed benefits. As indicated hereinabove, such referral is a necessary condition for the emergence of the right of an insured person to finance examinations from public funds. The authority of the 1st instance, refusing the complainants "the right to healthcare benefits, i.e. the reimbursement of the costs of treatment by the method of extracorporeal fertilization..." indicated correctly that the Act of 27 August 2004 on Publicly Funded Healthcare Benefits does not foresee the possibility of reimbursement of costs of treatment at the request of the (insured) recipient of healthcare benefits.

Art. 109 of the quoted Act, which is the basis for adjudication in individual cases regarding

health insurance, includes among them cases related to health insurance coverage and the establishment of the right to healthcare benefits. As intended by the legislator, only these two categories of cases may be considered individual cases related to healthcare insurance in which the authorities of the Fund may adjudicate. The Voivodeship Administrative Court finds unjustified the position of the Fund authorities, according to which cases regarding the establishment of the right to healthcare benefits include cases connected with the reimbursement of costs of conducted medical examinations. The matter of this case is not the establishment of the right to healthcare benefits, but the reimbursement of costs incurred by the complainants.

Additionally, it should be emphasized that the basis for financing healthcare benefits by the Fund must result directly from the provisions of the Act on Benefits, which does not provide for the possibility of financing such benefits on discretionary basis and, moreover, excludes direct payment for the examinations by the recipient of healthcare benefits. The entity entitled to requesting remuneration from the Fund for a healthcare benefit provided to a recipient of healthcare benefits is always the provider of healthcare benefits, including a situation whereby the provider has not entered into a contract with the Fund for the provision of healthcare benefits.

Indeed, the complainants were correct to indicate that Art. 68 (1) of the Constitution of the Republic of Poland guarantees to everyone the right to protection of health and that the public authorities are duty-bound to provide equal access to publicly funded healthcare benefits to all citizens, irrespective of their material situation, but the conditions for and extent of providing these benefits are specified by the Act of 27 August 2004 on Publicly Funded Healthcare Benefits, which is the basis of adjudication in the case at issue.

It should be emphasized that, in the course of the proceedings, the authority did not question the possibility of conducting specific, indicated procedures included in the contract for the provision of healthcare benefits entered into with the Non-Public Healthcare Unit (...). However, the basis for the provision of such benefits is always a referral from a health insurance physician, which the complainants did not have at the time of commencement of certain diagnostic procedures and subsequently, of the extracorporeal fertilization performed outside of the public healthcare insurance.

Having considered the foregoing and upon finding that the decision does not violate the law, pursuant to Art. 151 of the Act of 30 August 2002 on Proceedings before Administrative Courts (*Dziennik Ustaw* No. 153, item 1270 as amended), the Voivodeship Administrative Court in Warsaw dismissed the complaint.